City of Lafayette Staff Report

For:	City Council
By:	Ann Merideth, Community Development Director
Date Written:	November 20, 2008
Meeting Date:	December 8, 2008
Subject:	Ordinance No. 578 repealing Chapter 6-26, Public Art, and adding Chapter 11-7, Public Art, and Resolution No. 2008-44 setting a public art fee and maintenance endowment requirement

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Summary

The City Council first considered Ordinance 578 for an amendment to the City's public art program on September 8, 2008. The Council directed staff to address how the program costs could be supported through new development's public art requirement or other methods. In response to Council direction, staff made the following changes to the ordinance: eliminated the proposed Public Art Commission and replaced it with a Public Art Committee; and added a maintenance endowment for public art that is required for new development when the art would be on property under the jurisdiction of the City. Staff also prepared a resolution setting a public art processing fee for new development and the maintenance endowment requirement. A nexus study supporting the new fee and endowment requirement is included in this staff report.

Background and Discussion

The issues that the Council focused on in September were the need for a commission, supporting the public art process through a fee or using a portion of the one percent requirement for new development, and maintenance requirements.

Regarding the creation of a new commission, staff agrees that another commission is not needed at this time. It is unlikely that there will be a regular and/or large amount of public art for the foreseeable future after the Library is completed (and the Library Public Art Committee will continue with that until the project is done). Therefore, staff is recommending that a committee be established with the understanding that it will meet on an as-needed basis.

Regarding the support of City costs, public art will come to the community through one of three methods:

- Required as part of a development proposal pursuant to the current public art ordinance
- Acquisition of artwork by the City or Redevelopment Agency
- Gift or donation of artwork to the City

Only with the first method is there the ability to impose an application fee or to use a portion of the one percent requirement to cover City costs. It is important to put the entire one percent towards the cost of the artwork, and staff recommends an application processing fee. A developer that would be subject to the

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public art requirement would be required to pay a fee to cover the review and processing by staff, committee and City Council. For the other two methods, the costs of acquiring artwork would be an infrequent City expense, and it would not be appropriate to ask a donor of artwork to cover the City's costs.

In addition, staff recommends that a developer who satisfies the public art requirement with an installation on City property be required to provide an endowment as part of the one percent cost for ongoing maintenance of the artwork. When a developer installs an artwork on City property, it becomes part of the City Public Art Collection. Maintenance will be the responsibility of the City. The developer will be required to submit a maintenance program with anticipated costs for the lifetime of the artwork as a part of the application. The Public Art Committee will review the program and costs, and make a recommendation to the City Council on its adequacy. When there is proposal to gift or donate an artwork, the proposal may include a maintenance program for review by the Committee. Requiring a maintenance endowment in this case would be optional for the City. But the gift of an artwork with high maintenance costs may be a reason for the City to decline the gift.

Nexus Study

Pursuant to Government Code §66001(a), anytime a fee is imposed as a condition of approval of a development project the City shall prepare the nexus study. This following satisfies the legal requirements for such a study:

- *Identify the purpose of the fee*

  The fee will support staff and other related City costs to process a public art application when required by Section 11-705 of the Lafayette Municipal Code. The maintenance endowment will support long-term maintenance costs by the City for required artwork installed on property under the jurisdiction. Such artwork will be part of the City of Lafayette Public Art Collection.

- *Identify the use for which the fee is charged*

  Fees will be collected and placed in the City's General Fund, and used to cover staff and other related City costs to process public art applications. Other costs include advertisement of meetings and displays, notices, copying, etc. Maintenance endowments will be placed in the City's Public Art Fund, and will be used exclusively to maintain the public artwork that was required pursuant to Section 11-705 of the Lafayette Municipal Code.

- *Identify how the fee's use bears a reasonable relationship to the type of development project on which the fee is imposed*

  The amount of the application fee is based on the following calculation:

Task	Hours	Cost @ $175 per hour*
Processing application	1.0	$175.00
1 Public Art Committee meeting	1.5	$262.50
1 City Council meeting	0.5	$87.50
Post-approval coordination, monitoring	2.0	$350.00
Total	5.0	$875.00

* Per the hourly rate in the City's adopted 2008/2009 Budget

The maintenance endowment will be established based on the long-term maintenance costs for an individual artwork. The costs will be proposed by the artist as part of a maintenance program and reviewed by the Public Art Committee. The Committee will make a recommendation to the City Council on the amount of the endowment.

- *Identify how the need for the public facility bears a reasonable relationship to the type of development to the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed*

  When the public art program was established by the City Council in 2004, it made the following findings:

  - The Lafayette General Plan includes a goal to support public art and a policy to promote public art that reflects the cultural life of the community.
  - The ordinance establishing the public art program was prepared to implement this General Plan goal and policy.
  - The public art program is consistent with the goals and policies of the General Plan.

  The fee will support the reasonable costs for processing public art applications to meet the goal of the General Plan. The maintenance endowment will ensure adequate funding to maintain public artworks for the benefit of the community.

Recommendation

Adopt Resolution No. 2008-44, and introduce Ordinance No. 578 and continue to January 12, 2009 for second reading and adoption.

Attachments

Resolution No. 2008-44
Ordinance No. 578
Ordinance No. 578 (with changes shown)

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

A resolution of the City Council of the City of Lafayette setting a public art application fee and requiring an artwork maintenance endowment for certain public art	)))	Resolution No. 2008-44

WHEREAS, Chapter 11-7 of the Lafayette Municipal Code requires public art for new development; and

WHEREAS, Lafayette Municipal Code section 11-705 provides that the City Council will establish a fee for processing a public art application, and section 11-703A requires an artwork maintenance endowment for certain required public art; and

WHEREAS, pursuant to Government Code §66001(a), anytime a fee is imposed as a condition of approval of a development project the City shall: (1) identify the purpose of the fee; (2) identify the use for which the fee is charged; (3) identify how the fee's use bears a reasonable relationship to the type of development project on which the fee is imposed; (4) identify how the need for the public facility bears a reasonable relationship to the type of development to the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

WHEREAS, a report dated November 20, 2008 has been prepared by the City staff that includes this information and is hereby adopted and incorporated herein by reference; and

WHEREAS, pursuant to Government Code Section 66016 et seq., the City has: (1) made available to the public at least ten days prior to its public hearing, data supporting the reasonableness of the fees; (2) mailed notice at least fourteen days prior to the public hearing to all interested persons who have requested notice of new or increased fees; (3) published notice at least ten days prior to the public hearing; and (4) held a duly noticed, regularly scheduled public hearing at which oral and written testimony was received regarding the proposed fees; and

WHEREAS, it has been determined with certainty that the imposition of the public art application processing fee and public artwork maintenance endowment requirement will not have an adverse significant effect on the environment, and are therefore not subject to the requirements of the California Environmental Quality Act (Section 15061(b)(3), CEQA Guidelines).

NOW, THEREFORE, the City Council of the City of Lafayette does resolve as follows:

1. The processing fee for a public art application, as required by Section 11-705 of the Lafayette Municipal Code, shall be $875.

2. Pursuant to Section 11-703A of the Lafayette Municipal Code, the cost of artwork will be an amount not less than one (1) percent of the construction or alteration cost. In the case of installation at property under the jurisdiction of the city, this cost of artwork will include an endowment towards the long-term maintenance of the artwork.

3. Processing fees will be placed in the City's General Fund.

4. A separate public art fund maintained by the City to be used exclusively for: providing sites for public art; acquiring or installing public art; commissioning public art for a specific site; and/or maintaining

artworks in the City of Lafayette public art collection. Maintenance endowments will be placed in the separate public art fund and used to maintain the public artwork that was acquired into the City Public Art Collection pursuant to Section 11-705 of the Lafayette Municipal Code.

5. The City Council of the City of Lafayette finds that the above recitals are true and correct.

6. This resolution shall become effective sixty (60) days after its adoption.

PASSED AND ADOPTED by the Council of the City of Lafayette at a regular meeting of said Council on December 8, 2008 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____
Joanne Robbins, City Clerk

APPROVED:

_____
_____, Mayor

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

Amending the Lafayette Municipal Code for Public Art by repealing Chapter 6-26, Public Art, and adding Chapter 11-7, Public Art	)))	Ordinance No. 578

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. The Lafayette Municipal Code includes public art requirements for new development, and it has been determined that the public art program should be expanded to include selection, acquisition, donation and maintenance of artwork for a City of Lafayette Public Art Collection.

2. The City desires to establish a fee for its public art requirement and to require an artwork maintenance endowment for certain public art.

3. This Ordinance amends the Lafayette Municipal Code to provide for an expanded public art program.

4. It has been determined with certainty that the amendments described in this Ordinance will not have an adverse significant effect on the environment, and are therefore not subject to the requirements of the California Environmental Quality Act (Section 15061(b)(3), CEQA Guidelines).

5. This Ordinance is consistent with the goals and policies of the General Plan as described in the public record for these amendments.

Section 2. The Lafayette Municipal Code is amended by repealing Chapter 6-26, Public Art.

Section 3. Title 11, Public Property and Works, of the Lafayette Municipal Code is amended to add the following chapter:

"Part 3. Public Art

Chapter 11-7
Public Art

Sections:

11-701 Purpose.
11-702 Definitions.
11-703 Public art requirement.
11-704 Public art committee.
11-705 Review process.
11-706 Gifts of artwork.
11-707 Criteria for public art.
11-708 Ownership; maintenance.
11-709 Deaccession.

11-7010 Public art fund.

11-701 Purpose.

The purpose of this chapter is to:

A. Establish a public art program and its administration.

B. Establish the city of Lafayette public art collection.

C. Contribute to the cultural enrichment of the community by adding public art that is of the highest quality, visually stimulating and of enduring value.

D. Ensure that public art is incorporated into project planning at the earliest possible stage.

E. Establish public art gift policies and procedures.

11-702 Definitions.

A. "Artist" means a person who has an established reputation of artistic excellence in the visual, performance, literary and/or media arts, as judged by peers, through a record of exhibitions, public commissions, sale of artworks, and/or educational attainment.

B. "Artwork" means all forms of art created by an artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

C. "City of Lafayette public art collection" or "city collection" means all artworks owned by the city of Lafayette or installed on property under the jurisdiction of the city.

D. "Construction or alteration" means new construction, or the rehabilitation, renovation, remodeling or improvement of more than fifty (50) percent of the gross square footage of an existing structure.

E. "Construction or alteration cost" means the cost to build a new structure or alter an existing structure as determined by Contra Costa Building Inspection in accordance with the most current building valuation data provided by the International Conference of Building Officials for use in determining project valuation.

F. "Cost of artwork" means the total cost of design, manufacture, and installation. In the case of an artwork installed on property under the jurisdiction of the city; the cost of artwork will include an endowment for the long-term maintenance of the artwork.

G. "Deaccession" means the procedure for the removal of an artwork.

H. "Donor" means an individual, group, organization, or business that proposes a public artwork for donation and placement or installation at a public site under city jurisdiction. When applicable, a donor is the artist(s) who created the proposed gift.

I. "Gift" means an existing or proposed artwork offered as a donation to the city for placement or installation at a public site under city jurisdiction. Alternatively, a gift is monetary for the purpose of acquiring public art for the city.

J. "Maintenance" means actions taken to retard or prevent damage to artwork by control of the environment and/or treatment of the artwork on a routine and long-term basis.

K. "Public art" means artworks of sculpture, murals, photography, and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics, or any combination of forms of visual media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof displayed at a public place.

L. "Public art committee" or "committee" means the committee appointed by the city council pursuant to section 11-704.

M. "Public place" means any exterior area on public or private property that is easily accessible and clearly visible to the general public. If located on private property, the area will be clearly visible from adjacent public property, such as a street, sidewalk, park or plaza.

N. "Public property" means property, including right-of-way, owned and/or under the jurisdiction of the city or other public agency.

11-703 Public art requirement.

A. Public art will be installed as a project requirement for the construction or exterior alteration of a structure or structures totaling 10,000 square feet or more when subject to the provisions of title 6 of this code. The installation shall be on the project site. The installation may be at an off-site public place, if requested by the project applicant, and the request is reviewed by the committee and approved by the city council. The cost of artwork will be an amount not less than one (1) percent of the construction or alteration cost. In the case of installation of artwork on property under the jurisdiction of the city, the cost of artwork will include an endowment towards the long-term maintenance of the artwork.

B. In lieu of meeting the requirement in subsection 11-703A, the city council may allow a project applicant to pay a fee equal to one (1) percent of the construction or alteration cost when it is found that location, siting or scale makes the provision of public art inappropriate or infeasible, or the council agrees with the applicant's reasons for not integrating public art into the project. In-lieu fees will be placed in the city's public art fund.

C. The public art requirement will not apply to the following activities:
   1. Underground public works projects;
   2. Street or sidewalk repairs;
   3. Tree planting or median landscaping;
   4. Remodeling, repair or reconstruction of a structure damaged by fire, flooding, wind, earthquake or other calamity;
   5. Affordable housing construction or alteration projects or the portion of a market-rate project designated for affordable housing; and/or
   6. Construction or alteration of a structure by a public or nonprofit institution.

11-704 Public art committee.

A public art committee will be appointed by the city council. This committee will be composed of Lafayette residents that, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts. The committee will advise the city council in matters pertaining to public art

acquisitions and gifts, artwork maintenance, and, when necessary, artwork deaccession. The committee will serve as steward of the city collection.

11-705 Review process.

A. An applicant seeking approval of a project subject to the requirements of section 11-703 will submit a public art application and fee, as established by the city council, concurrent with other required project applications to the planning division. The application will include a description of the proposed artwork, budget for design, fabrication, transportation, and installation, resume of the artist, and a maintenance program and budget for the artwork.

B. The committee will consider the public art application. The committee will consider the public art proposal based on the criteria in section 11-707 or an in-lieu request, and make a recommendation to the city council.

C. Upon receipt of the committee's recommendation, the city council will consider the public art proposal based on the criteria in section 11-707 or an in-lieu request, and will approve or deny the proposal or request.

D. Agreement. If the city council approves the proposed artwork for property under the jurisdiction of the city, a formal agreement will be executed between the city and the project applicant. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance budget and requirements, transfer of title, applicant's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

E. Approved public art will be installed prior to a certificate of occupancy being issued for the project.

F. An in-lieu fee will be paid to the public art fund prior to the first building permit being issued for the project.

G. Deaccession. The alteration or removal of public art that was installed as a requirement of this chapter will be subject to section 11-709.

11-706 Gifts of artwork.

A. Gifts of artwork considered.

1. The city will consider a donor's offer of an existing artwork, commission of an artwork by a specific artist or artists, or to commission an artwork through a competitive public process.

2. The city will consider proposed gifts only with the understanding that no city funds will be required for fabrication, siting or installation of the artwork.

3. Donors may be required to provide a maintenance program for the proposed gift, including estimated maintenance costs. Excessive maintenance costs may be grounds for rejection of the gift.

B. Review process.

1. All proposed gifts to the city will be referred to the committee. The committee's recommendation on the acceptance or rejection of proposed gifts will be referred to the city council for final action.

2. If the city council approves the acceptance of a gift, a formal agreement will be executed between the city and the donor and/or artist. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance and budget requirements, transfer of title, donor's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

C. Review criteria; standards for acceptance.

1. The proposed artwork will be reviewed based on the criteria listed in section 11-707.

2. Budget. Consideration will include an evaluation of the donor's proposed budget and the artist's ability to successfully complete the project within the proposed budget, and review to assess realistic estimates and comprehensiveness of the budget as it address all costs of the proposal.

3. Unrestricted gifts. Proposed gifts to the city will be clear and unrestricted.

4. Unique artworks. Only one-of-a-kind artworks will be considered, with the exception of prints, photographs or other limited-edition artworks of high quality.

5. Cost of artwork. Acceptance is contingent upon receipt by the city of payment from the donor for all costs associated with the gift that not covered by the donor directly, such as transportation and installation.

D. Alterations to proposed artwork design. Any significant change to the design or concept made by the artist or donor after approval of the gift proposal must be reviewed and recommended by the committee and approved by the city council.

E. Review of fabrication and installation. Artworks accepted from maquettes or drawings will be subject to city review throughout fabrication and installation. Specific plans for site design, installation, maintenance and protection will be submitted to the city for approvals.

11-707 Criteria for public art.

A. Guidelines for the approval of public art will include, but are not limited to the following criteria:

1. Aesthetic quality. The foremost consideration will be the inherent quality of the proposed artwork as assessed by the critical review of the public art committee. The history, reputation and/or promise of the artist may also be key considerations.

2. Relationship to the collection and to the community. The proposed artwork will be analyzed for its potential relationship to the city's present collection, the requirements of this chapter, and whether it will enhance the aesthetic quality of the community.

3. Compatibility. Conceptual compatibility and appropriateness of the proposed artwork to the surrounding built and/or natural environment will be factors for consideration, and will include scale, form, content and design.

4. Materials, fabrication and installation. The committee will evaluate the existing artwork's material or the artist's proposed materials and their appropriateness as regards structural and surface integrity, protection against theft, vandalism, public safety, and weathering, and an analysis of long-term maintenance needs. The committee will also evaluate the proposed method of installation and an evaluation of safety and structural factors involved in the installation.

B. The following items will not be considered as public art:
   1. Art objects which are mass-produced from a standard design;
   2. Reproductions of original artworks;
   3. Decorative, ornamental or functional elements which are designed by the project architect as opposed to an artist commissioned for the purpose of creating the artwork; or
   4. Landscape architecture and landscape.

11-708 Ownership; maintenance.

A. Ownership. If the artwork is installed on private property as part of an approved project, the property owner will own the artwork. Artwork installed on property under the jurisdiction of the city will be owned by the city as part of its collection.

B. Maintenance. For artwork installed on private property as part of an approved project, the property owner will be responsible for maintenance for the life of the artwork. The city will be responsible for maintenance of the artwork in the city collection, except when the artwork is deaccessioned pursuant to section 11-709.

11-709 Deaccession.

A. Public art on private property. Public art that was installed as a requirement of this chapter will not be removed or altered unless the replacement or alteration is reviewed by the committee and approved by the city council pursuant to section 11-705.

B. Public art in the city collection. In accepting an artwork into its collection, the city will not be bound by any agreement with a project applicant or donor of artwork that restricts its ability to act in the city's best interests. Nothing in the acceptance of an artwork will prevent the city from approving subsequent disposal (removal, relocation, and/or sale) of such artwork if it serves the city's best interest to do so. When disposal is proposed, the committee will review the proposal and make a recommendation to the city council for final action. The city will deaccession and sell or otherwise dispose of artworks in its collection in accordance with the limitations of the California Preservation Act (Civil Code 987) and the Visual Artists Rights Act of 1990 (17 U.S.C. 106A and 113(d)).

11-710 Public art fund.

A. In-lieu fees and maintenance endowments will be placed into a separate public art fund maintained by the city. Other funds designated for public art, such as awards and gifts, will be placed into the separate fund. The fund will be used exclusively to:
   1. Provide sites for public art;
   2. Acquire or install public art;
   3. Commission public art for a specific site; and/or
   4. Maintain artworks in the city of Lafayette public art collection.

B. The committee will recommend to the city council how the public art fund be expended."

Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision will not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

Section 6. Publication. The City Clerk will either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

The foregoing Ordinance was introduced and amended at a meeting of the Lafayette City Council held on December 8, 2008, and adopted and ordered published at a meeting of the City Council held on January 12, 2009 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____

_____, Mayor

ATTEST:

_____

Joanne Robbins, City Clerk

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE
IN THE MATTER OF:

Amending the Lafayette Municipal Code for Public Art by repealing Chapter 6-26, Public Art, and adding Chapter 11-7, Public Art	)	Ordinance No. 578

The City Council of the City of Lafayette does ordain as follows:

Section 1. Findings. The City Council finds the following:

1. The Lafayette Municipal Code includes public art requirements for new development, and it has been determined that the public art program should be expanded to include selection, acquisition, donation and maintenance of artwork for a City of Lafayette Public Art Collection.

2. The City desires to establish a fee for its public art requirement and to require an artwork maintenance endowment for certain public art.

3. This Ordinance amends the Lafayette Municipal Code to provide for an expanded public art program.

4. It has been determined with certainty that the amendments described in this Ordinance will not have an adverse significant effect on the environment, and are therefore not subject to the requirements of the California Environmental Quality Act (Section 15061(b)(3), CEQA Guidelines).

5. This Ordinance is consistent with the goals and policies of the General Plan as described in the public record for these amendments.

Section 2. The Lafayette Municipal Code is amended by repealing Chapter 6-26, Public Art.

Section 3. Title 11, Public Property and Works, of the Lafayette Municipal Code is amended to add the following chapter:

"Part 3. Public Art

Chapter 11-7
Public Art

Sections:

11-701 Purpose.
11-702 Definitions.
11-703 Public art requirement.
11-704 Public art committee.
11-705 Review process.
11-706 Gifts of artwork.
11-707 Criteria for public art.
11-708 Ownership; maintenance.
11-709 Deaccession.

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adding Chapter 2-12, Public Art Commission,

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"Chapter 2-12¶
Public Art Commission¶
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2-1201 Creation of public art commission.¶
2-1202 Qualifications.¶
2-1203 Term of office.¶
2-1204 Removal or vacancy.¶
2-1205 No compensation.¶
2-1206 Time and place of regular meetings.¶
2-1207 Appointments of chair and vice-chair.¶
2-1208 Record of proceedings.¶
2-1209 Quorum.¶
2-1210 Absence from meetings.¶
2-1211 Duties of officers.¶
2-1212 Duties of the commission.¶
¶
¶
2-1201 Creation of public art commission.¶
¶
A public art commission in the city of Lafayette is established to guide the public art program, as described in chapter 11-7 of this code, and to serve as public art advisors to the city council, commissions and other boards. The commission consists of seven members appointed by the city council. ¶
¶
2-1202 Qualifications.¶
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Each member of the commission will be a resident of the city. Members will, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts. ¶
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2-1203 Term of office.¶
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The term of office of each member of the commission is four years. Each member serves until a successor is appointed.¶
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11-7010 Public art fund.

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11-701 Purpose.

The purpose of this chapter is to:

A. Establish a public art program and its administration.

B. Establish the city of Lafayette public art collection.

C. Contribute to the cultural enrichment of the community by adding public art that is of the highest quality, visually stimulating and of enduring value.

D. Ensure that public art is incorporated into project planning at the earliest possible stage.

E. Establish public art gift policies and procedures.

11-702 Definitions.

A. "Artist" means a person who has an established reputation of artistic excellence in the visual, performance, literary and/or media arts, as judged by peers, through a record of exhibitions, public commissions, sale of artworks, and/or educational attainment.

B. "Artwork" means all forms of art created by an artist and conceived in any discipline or medium, including visual, performance, literary, media and temporary works.

C. "City of Lafayette public art collection" or "city collection" means all artworks owned by the city of Lafayette or installed on property under the jurisdiction of the city.

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D. "Construction or alteration" means new construction, or the rehabilitation, renovation, remodeling or improvement of more than fifty (50) percent of the gross square footage of an existing structure.

E. "Construction or alteration cost" means the cost to build a new structure or alter an existing structure as determined by Contra Costa Building Inspection in accordance with the most current building valuation data provided by the International Conference of Building Officials for use in determining project valuation.

F. "Cost of artwork" means the total cost of design, manufacture, and installation. In the case of an artwork installed on property under the jurisdiction of the city, the cost of artwork will include an endowment for the long-term maintenance of the artwork.

G. "Deaccession" means the procedure for the removal of an artwork.

H. "Donor" means an individual, group, organization, or business that proposes a public artwork for donation and placement or installation at a public site under city jurisdiction. When applicable, a donor is the artist(s) who created the proposed gift.

I. "Gift" means an existing or proposed artwork offered as a donation to the city for placement or installation at a public site under city jurisdiction. Alternatively, a gift is monetary for the purpose of acquiring public art for the city.

J. "Maintenance" means actions taken to retard or prevent damage to artwork by control of the environment and/or treatment of the artwork on a routine and long-term basis.

K. "Public art" means artworks of sculpture, murals, photography, and original works of graphic art, waterworks, fiberworks, neon, glass, mosaics, or any combination of forms of visual media, furnishing or fixtures permanently affixed to a structure or its grounds, or a combination thereof displayed at a public place.

L. "Public art committee" or "committee" means the committee appointed by the city council pursuant to section 11-704.

M. "Public place" means any exterior area on public or private property that is easily accessible and clearly visible to the general public. If located on private property, the area will be clearly visible from adjacent public property, such as a street, sidewalk, park or plaza.

N. "Public property" means property, including right-of-way, owned and/or under the jurisdiction of the city or other public agency.

11-703 Public art requirement.

A. Public art will be installed as a project requirement for the construction or exterior alteration of a structure or structures totaling 10,000 square feet or more when subject to the provisions of title 6 of this code. The installation shall be on the project site. The installation may be at an off-site public place, if requested by the project applicant, and the request is reviewed by the committee and approved by the city council. The cost of artwork will be an amount not less than one (1) percent of the construction or alteration cost. In the case of installation of artwork on property under the jurisdiction of the city, the cost of artwork will include an endowment towards the long-term maintenance of the artwork.

B. In lieu of meeting the requirement in subsection 11-703A, the city council may allow a project applicant to pay a fee equal to one (1) percent of the construction or alteration cost when it is found that location, siting or scale makes the provision of public art inappropriate or infeasible, or the council agrees with the applicant's reasons for not integrating public art into the project. In-lieu fees will be placed in the city's public art fund.

C. The public art requirement will not apply to the following activities:
   1. Underground public works projects;
   2. Street or sidewalk repairs;
   3. Tree planting or median landscaping;
   4. Remodeling, repair or reconstruction of a structure damaged by fire, flooding, wind, earthquake or other calamity;
   5. Affordable housing construction or alteration projects or the portion of a market-rate project designated for affordable housing; and/or
   6. Construction or alteration of a structure by a public or nonprofit institution.

11-704 Public art committee.

A public art committee will be appointed by the city council. This committee will be composed of Lafayette residents that, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts. The committee will advise the city council in matters pertaining to public art

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acquisitions and gifts, artwork maintenance, and, when necessary, artwork deaccession. The committee will serve as steward of the city collection.

11-705 Review process.

A. An applicant seeking approval of a project subject to the requirements of section 11-703 will submit a public art application and fee, as established by the city council, concurrent with other required project applications to the planning division. The application will include a description of the proposed artwork, budget for design, fabrication, transportation, and installation, resume of the artist, and a maintenance program and budget for the artwork.

B. The committee will consider the public art application. The committee will consider the public art proposal based on the criteria in section 11-707 or an in-lieu request, and make a recommendation to the city council.

C. Upon receipt of the committee's recommendation, the city council will consider the public art proposal based on the criteria in section 11-707 or an in-lieu request, and will approve or deny the proposal or request.

D. Agreement. If the city council approves the proposed artwork for property under the jurisdiction of the city, a formal agreement will be executed between the city and the project applicant. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance budget and requirements, transfer of title, applicant's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

E. Approved public art will be installed prior to a certificate of occupancy being issued for the project.

F. An in-lieu fee will be paid to the public art fund prior to the first building permit being issued for the project.

G. Deaccession. The alteration or removal of public art that was installed as a requirement of this chapter will be subject to section 11-709.

11-706 Gifts of artwork.

A. Gifts of artwork considered.

1. The city will consider a donor's offer of an existing artwork, commission of an artwork by a specific artist or artists, or to commission an artwork through a competitive public process.

2. The city will consider proposed gifts only with the understanding that no city funds will be required for fabrication, siting or installation of the artwork.

3. Donors may be required to provide a maintenance program for the proposed gift, including estimated maintenance costs. Excessive maintenance costs may be grounds for rejection of the gift.

B. Review process.

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1. All proposed gifts to the city will be referred to the committee. The committee's recommendation on the acceptance or rejection of proposed gifts will be referred to the city council for final action.

2. If the city council approves the acceptance of a gift, a formal agreement will be executed between the city and the donor and/or artist. This agreement will include the costs, responsibilities, and schedule of all aspects of the project, including project funding, fabrication, site preparation, installation, maintenance and budget requirements, transfer of title, donor's and/or artist's rights, project supervision, documentation, an identification plaque, city's rights (including deaccessioning), and other requirements established by the city.

C. Review criteria; standards for acceptance.

1. The proposed artwork will be reviewed based on the criteria listed in section 11-707.

2. Budget. Consideration will include an evaluation of the donor's proposed budget and the artist's ability to successfully complete the project within the proposed budget, and review to assess realistic estimates and comprehensiveness of the budget as it address all costs of the proposal.

3. Unrestricted gifts. Proposed gifts to the city will be clear and unrestricted.

4. Unique artworks. Only one-of-a-kind artworks will be considered, with the exception of prints, photographs or other limited-edition artworks of high quality.

5. Cost of artwork. Acceptance is contingent upon receipt by the city of payment from the donor for all costs associated with the gift that not covered by the donor directly, such as transportation and installation.

D. Alterations to proposed artwork design. Any significant change to the design or concept made by the artist or donor after approval of the gift proposal must be reviewed and recommended by the committee and approved by the city council.

E. Review of fabrication and installation. Artworks accepted from maquettes or drawings will be subject to city review throughout fabrication and installation. Specific plans for site design, installation, maintenance and protection will be submitted to the city for approvals.

11-707 Criteria for public art.

A. Guidelines for the approval of public art will include, but are not limited to the following criteria:

1. Aesthetic quality. The foremost consideration will be the inherent quality of the proposed artwork as assessed by the critical review of the public art committee. The history, reputation and/or promise of the artist may also be key considerations.

2. Relationship to the collection and to the community. The proposed artwork will be analyzed for its potential relationship to the city's present collection, the requirements of this chapter, and whether it will enhance the aesthetic quality of the community.

3. Compatibility. Conceptual compatibility and appropriateness of the proposed artwork to the surrounding built and/or natural environment will be factors for consideration, and will include scale, form, content and design.

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4. Materials, fabrication and installation. The committee will evaluate the existing artwork's material or the artist's proposed materials and their appropriateness as regards structural and surface integrity, protection against theft, vandalism, public safety, and weathering, and an analysis of long-term maintenance needs. The committee will also evaluate the proposed method of installation and an evaluation of safety and structural factors involved in the installation.

B. The following items will not be considered as public art:
   1. Art objects which are mass-produced from a standard design;
   2. Reproductions of original artworks;
   3. Decorative, ornamental or functional elements which are designed by the project architect as opposed to an artist commissioned for the purpose of creating the artwork; or
   4. Landscape architecture and landscape.

11-708 Ownership; maintenance.

A. Ownership. If the artwork is installed on private property as part of an approved project, the property owner will own the artwork. Artwork installed on property under the jurisdiction of the city will be owned by the city as part of its collection.

B. Maintenance. For artwork installed on private property as part of an approved project, the property owner will be responsible for maintenance for the life of the artwork. The city will be responsible for maintenance of the artwork in the city collection, except when the artwork is deaccessioned pursuant to section 11-709.

11-709 Deaccession.

A. Public art on private property. Public art that was installed as a requirement of this chapter will not be removed or altered unless the replacement or alteration is reviewed by the committee and approved by the city council pursuant to section 11-705.

B. Public art in the city collection. In accepting an artwork into its collection, the city will not be bound by any agreement with a project applicant or donor of artwork that restricts its ability to act in the city's best interests. Nothing in the acceptance of an artwork will prevent the city from approving subsequent disposal (removal, relocation, and/or sale) of such artwork if it serves the city's best interest to do so. When disposal is proposed, the committee will review the proposal and make a recommendation to the city council for final action. The city will deaccession and sell or otherwise dispose of artworks in its collection in accordance with the limitations of the California Preservation Act (Civil Code 987) and the Visual Artists Rights Act of 1990 (17 U.S.C. 106A and 113(d)).

11-710 Public art fund.

A. In-lieu fees and maintenance endowments will be placed into a separate public art fund maintained by the city. Other funds designated for public art, such as awards and gifts, will be placed into the separate fund. The fund will be used exclusively to:
   1. Provide sites for public art;
   2. Acquire or install public art;
   3. Commission public art for a specific site; and/or
   4. Maintain artworks in the city of Lafayette public art collection.

B. The committee will recommend to the city council how the public art fund be expended."

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Section 4. Effective Date. This Ordinance becomes effective thirty (30) days after its adoption.

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Section 5. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision will not effect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

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Section 6. Publication. The City Clerk will either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption.

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The foregoing Ordinance was introduced and amended at a meeting of the Lafayette City Council held on December 8, 2008, and adopted and ordered published at a meeting of the City Council held on January 12, 2009 by the following vote:

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Deleted: September 22, 2008

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

_____
_____, Mayor

Deleted: Michael Anderson

ATTEST:

_____
Joanne Robbins, City Clerk

Section 3. Title 2, Administration, of the Lafayette Municipal Code is amended by adding the following chapter:

"Chapter 2-12
Public Art Commission

2-1201 Creation of public art commission.
2-1202 Qualifications.
2-1203 Term of office.
2-1204 Removal or vacancy.
2-1205 No compensation.
2-1206 Time and place of regular meetings.
2-1207 Appointments of chair and vice-chair.
2-1208 Record of proceedings.
2-1209 Quorum.
2-1210 Absence from meetings.
2-1211 Duties of officers.
2-1212 Duties of the commission.

2-1201 Creation of public art commission.

A public art commission in the city of Lafayette is established to guide the public art program, as described in chapter 11-7 of this code, and to serve as public art advisors to the city council, commissions and other boards. The commission consists of seven members appointed by the city council.

2-1202 Qualifications.

Each member of the commission will be a resident of the city. Members will, by experience, training, education, occupation or avocation, have demonstrated knowledge of and interest in the visual arts.

2-1203 Term of office.

The term of office of each member of the commission is four years. Each member serves until a successor is appointed.

2-1204 Removal or vacancy.

A member of the commission may be removed by a majority vote of the city council. A vacancy is filled in the same manner as the original appointment. A person appointed to fill a vacancy serves for the remainder of the unexpired term.

2-1205 No compensation.

Members of the commission serve without compensation.

2-1206 Time and place of regular meetings.

The commission will meet at least once a month at a time and place in Lafayette designated by the commission. Commission meetings are open to the public and will be noticed in accordance with law.

2-1207 Appointments of chair and vice-chair.

The commission members will designate the chair and vice-chair of the commission from among the membership. Each chair and vice-chair term will be one year.

2-1208 Record of proceedings.

The commission will keep a public record of its proceedings, including findings and decisions.

2-1209 Quorum.

Four members of the commission will constitute a quorum for the transaction of business.

2-1210 Absence from meetings.

If a member of the commission is absent without cause from three successive regular meetings of the commission, the office becomes vacant automatically. The commission will immediately notify the city council of the vacancy.

A member is not absent without cause if his or her absence is due to illness or is unavoidable, and the member gives the chair written notice before the day of the meeting that he or she will be absent and giving the reason for the absence.

2-1211 Duties of officers.

Chair. The chair will preside at all meetings of the commission.

Vice-chair. The vice-chair will serve as the chair in the absence or inability of the chair to preside.

2-1212 Duties of the commission.

The commission will:

Advise the city in matters pertaining to the quality, quantity, scope and style of public art;

Prepare and regularly update a public art master plan for adoption by the city council;

Review and make recommendations to the city council on all public art acquisitions and gifts;

Review and make recommendations to the city council on deaccessioning of artworks, when necessary;

Serve as stewards of the city of Lafayette public art collection; and

Serve as goodwill ambassadors of the public art program to the community."